

BULLETIN CHILD NUTRITION PROGRAMS

NSLP 25-08

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SUBJECT: Final Fluid Milk Substitution Rule

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The final rule *Fluid Milk Substitution in the School Nutrition Program* (73 FR 52903) became effective October 14, 2008, and is enclosed for reference. The rule is summarized as follows:

- If a School Food Authority (SFA) chooses to do so, it may offer a nondairy beverage as a substitute for fluid milk with a written statement from a parent/guardian or recognized medical authority. The supporting statement must identify the student's medical or other special dietary need that precludes cow's milk.
- Any nondairy beverages offered as a substitute for fluid milk must be nutritionally equivalent to fluid milk and provide specific levels of calcium, protein, vitamins A and D, magnesium, phosphorus, potassium, riboflavin, and vitamin B-12.
- At this time, there are currently no available products on the market that are recognized as being "nutritionally equivalent" to fluid milk. The United States Department of Agriculture (USDA) anticipates products to become available in the near future and plans on revisiting this policy in six months to issue further guidance.

Schools may continue to offer nondairy beverages, such as juice, as an additional side item or menu component under Offer Versus Serve rules. Nondairy beverages must only meet the above nutrient requirements when schools do not use Offer Versus Serve and require students to take milk with every meal.

This rule applies only to non-life-threatening, non-disabling reasons for the substitution of fluid milk, such as those for ethnic, cultural, religious, or ethical reasons. Schools that elect to offer milk substitutes to students without disabilities can now accept a statement from a parent/legal guardian or from a medical authority identifying the student's need. This rule only applies to milk substitution.

Any substitution made for an allergy or medical condition that is defined as a disability under the *Americans with Disabilities Act* must continue to be documented in a statement signed by a licensed physician as described in *Accommodating Children with Special Dietary Needs in the School Nutrition Programs*. The above nutrient requirements do not apply to beverages that are specified by a physician as being required for students with disabilities. This rule also has no

effect on a school's ability to offer lactose-free milk to a student. Lactose-free milk continues to be allowed as part of the reimbursable meal.

Because no products are currently meet this rule's requirements, schools may continue to provide accommodations they have already agreed to under the prior program regulations for students with special needs. No new accommodations may be made. It is anticipated that allowable products will be available in the near future. At that time, schools should seek alternate funding sources if financial barriers are an impediment. Please see the potential funding sources listed in the guidance *Accommodating Children with Special Dietary Needs in the School Nutrition Programs*.